

IBLA 70-45 Decided April 7, 1971

Public Lands: Special Use Permits

An application for the renewal of a special land-use permit is properly rejected where it is determined that it is not in the public interest to continue private occupancy of land which possesses recreational and scenic values, as further private occupancy would be inconsistent with the recently declared policy of the Congress with respect to this land and with the Bureau of Land Management's objectives and programs for the public use of the land.

IBLA 70-45 : Oregon 016080

ALLEN M. AND MARGERY D. BOYDEN

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: Special land-use permit
: renewal application
: rejected
:
: Affirmed

DECISION

Allen M. and Margery D. Boyden have appealed to the Secretary of the Interior from a decision of March 24, 1969, whereby the Office of Appeals and Hearings, Bureau of Land Management, affirmed a decision of the Bureau's Oregon State Office, dated January 14, 1969, rejecting the Boydens' application for the renewal of their special land-use permit for a recreational homesite, for the reason that it is not in the public interest to continue private occupancy of the land.

The land involved is a portion of Lot 2 (E 1/2 SW 1/4 NE 1/4 SE 1/4 SW 1/4 and SE 1/4 NE 1/4 SE 1/4 SW 1/4), and the W 1/2 SW 1/4 NW 1/4 SW 1/4 SE 1/4, sec. 23, T. 33 S., R. 9 W., W.M., Oregon, situated at Horseshoe Bend on the Rouge River. ^{1/} These and other lands were withdrawn by Water Power Designation No. 14 of December 12, 1917, Power Site Reserve No. 728 of December 27, 1919, and Power Project No. 903 of May 31, 1928, from all forms of disposal, including that under the mining laws. The lands were withdrawn and set aside by Public Land Order No. 1726 of September 3, 1958, for the preservation of the scenic and recreation areas adjacent to the Rogue River and its tributaries. Also, they and other lands along the river have been designated as a component part of the national wild and scenic rivers system in the Wild and Scenic Rivers Act of October 2, 1968, 16 U.S.C. § 1271 (Supp. V, 1969).

^{1/} This description is stated in the record to be the correct one, although the permits describe the tract as being in Lot 1.

The appellants first occupied the land in 1947 as purchasers of a mining claim located in 1935. Since the mining claim was declared void by a land office decision dated June 30, 1958, they have been permitted by the issuance of special land-use permits to occupy the tract, on which they have a cabin, as a recreational homesite. The first permit ran from January 1, 1959, through December 31, 1963. Since then permits have been issued on a year to year basis. The last permit was issued for the period from January 1, 1968, to December 31, 1968, with a special condition that allowed the permittees six months after the termination of the permit within which to remove their property from the land. 2/ The subject permit renewal application was filed on December 20, 1968, for the year 1969.

On appeal to the Secretary, the appellants incorporate by reference their reasons for appeal to the Director of the Bureau of Land Management. They assert that they have been maneuvered by their own naive honesty into the situation in which they now find themselves, in that no attempt has been made by the Bureau to remove eight other dwelling owners along a 24-mile stretch of the Rouge River, whose occupancy they allege is without "permits or rental fees."

In their statement of reasons appellants contend that they have been neighborly occupants of the tract and have used it as their summer vacation place for some years, emphasizing the tract's recreational value and potential. They request its retention for their own personal and exclusive use. The Office of Appeals and Hearings of the Bureau found that private occupancy of the land in question would create private control of the scenic attractions and would thus be inconsistent with the Bureau's objectives for public use of the area. It further found that the appellants have had sufficient time within which to phase out their use of the tract.

2/ In a decision dated April 23, 1968, the State Director, Oregon, rejected an application by the Boydens to purchase the tract under the Mining Claim Occupancy Act. 30 U.S.C. § 701 (1964).

A special land-use permit is not authorized by any statutory provision. However, under the general authority of the Secretary of the Interior to administer the public lands, it may be issued for a specific purpose not specifically provided for by existing law. See 43 CFR 2920.0-2, 35 F.R. 9667, formerly 43 CFR 2236.0-2. Such a permit carries only a limited right to the use of the land for a designated purpose and does not segregate the land from entry for other purposes under the public land laws. F. Lowell Ruby, A-30623 (January 18, 1967). The Department has provided by regulation, in authorizing the issuance of special land-use permits, that:

A special land-use permit will be revocable in the discretion of the authorized officer at any time, upon notice, if in his judgment the lands should be devoted to another use 43 CFR 2920.3(a)(1), formerly 43 CFR 2236.1-3(a)(1).

The Special Land-Use Application and Permit form contains a revocation provision in almost identical language.

The issuance of a special land-use permit is clearly discretionary. It carries only a limited right, which may be revoked when it is determined that the land covered by the permit should be devoted to another use. Although a renewal applicant is preferred over any other applicant for a like use, 43 CFR 2920.3 (c), formerly 43 CFR 2236.1-3(c), if in the judgment of the authorized officer the land embraced in a renewal application should be devoted to another use, it is proper to reject the renewal application.

The five-acre tract in question is in a rugged, scenic and remote canyon on the Rouge River, an area known as Horseshoe Bend. It offers an excellent view of the river and is free of flooding. The Rouge River Trail passes through the tract. It is suitable for a small campground. As we have seen, it is within the stretch of the Rouge River and adjacent land designated as a component part of the wild and scenic rivers system in the Wild and Scenic Rivers Act, *supra*, which was enacted during the life of the last permit issued to the appellants. Section 1 of that act, in pertinent part reads:

(b) It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations 16 U.S.C. § 1271 (Supp. V, 1969)

Thus, it is clear that the Congress expressly intended that the recreational and scenic values along the designated rivers shall be preserved for the use and benefit of the general public. This was also the purpose of the withdrawal of the subject land under Public Land Order 1726. Consequently, the determination by the Bureau's State Director that the subject tract should be devoted to the use and benefit of the general public rather than continued private occupancy was a proper basis for the rejection of the appellants' renewal application.

As to others who may occupy land along the river, we have before us only appellants' renewal application. In any event, improper possession of other tracts would not justify a further permit to appellants, if that permit is not in the public interest.

In the circumstances of this case, the appellants are allowed until September 30, 1971, within which to remove their improvements. Any improvements remaining on the tract after that date will become the property of the United States.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Martin Ritvo, Member

We concur.

Newton Frishberg, Chairman

Francis E. Mayhue, Member.

